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**MINUTES OF THE SPRINGDALE TOWN COUNCIL SPECIAL MEETING ON
WEDNESDAY, DECEMBER 30, 2015 AT TOWN HALL, 118 LION BLVD., SPRINGDALE, UTAH.
MEETING CONVENED AT 10:10 AM**

MEMBERS PRESENT: Mayor Stanley J. Smith, Council members Mark Chambers, Adrian Player, Bill Weyher, Mike Alltucker

ALSO PRESENT: Town Manager Rick Wixom, Town Attorney Greg Hardman remotely via telephone, Town Clerk Darci Carlson recording. See attached sheet for citizens signed in.

Approval of agenda: Motion by Mark Chambers to approve the agenda as posted, seconded by Adrian Player:

Weyher: Aye

Chambers: Aye

Smith: Aye

Player: Aye

Alltucker: Aye

Motion passed unanimously.

Discussion/Information/Non-action Items

General discussion & announcements: Mr. Chambers announced there would be fireworks tomorrow night at 7pm at the baseball field.

Action Items – Administration

Discussion and possible action regarding purchase of promissory notes and assignments of associated second deeds of trust from Color Country Community Housing, Inc. for Lots 7 and 8, Red Hawk at Springdale Subdivision: Mayor Smith said the objective was to fix the situation with the Red Hawk subdivision and make as many people whole as possible.

Mr. Wixom provided the Council and audience background about the topic. He said Red Hawk was developed as a combination of apartments and single family homes. Some lots would be sold at market rate while others would sell to qualifying buyers at an 80% or 120% average median income (AMI) bracket. Homes were built on lots 7 and 8. Six lots remained vacant and were under a mutual self-help program that didn't come to fruition. The developer, Color Country, had gone bankrupt. RCAC (Rural Community Assistance Corporation), the lender, had taken the vacant lots back. A few weeks back, RCAC's lawyer discussed a desire to change the Red Hawk development agreement with the Council. RCAC wants to get these remaining lots off their books.

- Town administration met with property owners and Tracy Dutson, who is familiar with Color Country and Utah Center for Affordable Housing, to discuss possible resolutions. There were a number of goals: RCAC wants to sell the lots; Red Hawk property owners want clarity, closure and equality; the Red Hawk HOA wants the remainder of the neighborhood built out; and, the Town of Springdale wants to accommodate affordable housing wherever it can.
- The property owners of lots 7 and 8 had issues with the equity sharing agreement and asked resolution be made as simple as possible.
- Mayor Smith said if the Town does nothing the lots will be sold to another entity.

Color Country submitted a proposal to the Town to purchase the 2nd mortgage notes on lots 7 and 8 for \$2500 each. The value of the notes was \$150,000.00 per lot. The question was whether the Town wants to purchase these notes from Color Country.

Mr. Wixom explained when the homes sold there was an appraised value and a significantly lower sales value. The difference between these two values was essentially rolled into a soft second mortgage. When the properties are sold, after the affordability period, the 2nd mortgage would become due and payable. Mr. Wixom said it was these notes the Council was contemplating purchasing today.

- If the Town bought the notes it would eliminate the equity sharing arrangements and give property owners credit for time in the program. There was no interest or set term on the notes. When the homes were sold, it would trigger payment of the note at time of closing.
- Mr. Chambers said unless the development agreement was amended one property owner could not build and the vacant lots would be unusable. Mr. Wixom agreed and said the development agreement would need to change however this was not part of the discussion today. The promissory notes were separate from the development agreement.

Logically the plat would be amended to reduce the number of vacant lots by two, leaving five. These two lots would be left as open space. This would eliminate the need for a cul-de-sac.

Mr. Alltucker asked if the Town had a lien on the properties for payment of development fees. Mr. Wixom said currently payment of the first mortgage was first priority. In second position was payment of the Town's deferred impact fees. Third was the equity sharing and payment of the 2nd mortgage to Color Country. Any remaining equity would be split between the seller and Color Country.

- Mr. Wixom explained that under the new proposal, the equity sharing component would be eliminated. Order of payment would then be the first mortgage, the deferred impact fees and then the 2nd note to the Town.

Mr. Weyher asked if the home owners could buy the promissory notes.

- Mr. Hardman was not completely certain however he indicated federal housing regulations may be impacted.
- Mr. Wixom said if the Town holds the promissory notes it makes it easier to control elements of the development agreement.
- Mr. Player commented if the homes are never sold the promissory notes are never paid off.

Susan Carver Winn, the property owner of lot 8, was in the audience. She said it was her understanding if the first mortgage was paid off the second mortgage would be forgiven.

Mr. Chambers said the Red Hawk project was started to provide affordable housing in Springdale. Unfortunately when the economy took a downturn, the project soured. He wanted to be sure the Town was protected but that property owners and the Red Hawk Home Owners Association wasn't punished. It was important for everyone to go into any new arrangement with eyes wide open.

- Mr. Hardman said under this proposal, the Town would be stepping into the position as lender. The Town needs to understand if it has any obligations aside from holding the promissory note secured by the first trust deed.
- Regarding Ms. Winn's comments, Mr. Hardman said he recalled at the conclusion of the affordability period obligations revert back to a more traditional arrangement.

Bruce Jenkins, attorney for Color Country and RCAC arrived at 10:25am. Mr. Jenkins said under the proposal the required length of time in the affordability period would reduce from 25 years to 10 years. This would be a benefit to the borrower.

Ms. Winn said because of the program she was able to get into a house she couldn't afford otherwise. The price of the home was the most she could qualify for. It stretched her thin. She had a lot of unanswered questions about the current situation.

Mr. Hardman said with the sale of the property the Town had an expectation they would recover the impact fees.

Mayor Smith said the intent was not to put people in a worse situation.

Mr. Chambers asked what happened if the Town decided not to buy the notes.

- Mr. Jenkins said the notes were allowed to be sold to another investor. They would likely be transferred in their current form with an affordability period and equity share component. RCAC foreclosed on the Color Country notes and there was pressure to liquidate assets by year end and make distributions to creditors. Mr. Jenkins said it made sense if the Town purchased the notes. Funds from any future sale could be put toward affordable housing.

Mr. Hardman referred to section 1.6 of the promissory document which spells out the formula used to determine how the note was calculated. The promissory note was not forgiven. Mr. Hardman said the potential impacts to the equity period and adjustment of percentage for affordability from 80% AMI to 120% AMI should be determined.

Mayor Smith said the issue before the Council today was whether or not the Town wanted to buy the notes. He said if purchased, the Town would have control over the affordability period and equity sharing. It would make any future changes to the development agreement easier to manage.

- Mr. Jenkins said administering the affordability period needs to continue.
- Mayor Smith said they previously discussed having Tracy Dutson administer the sale of the lots and qualify buyers.

Mr. Wixom asked if the property owners could purchase the promissory notes. Mr. Jenkins answered they could however Color Country had not considered that.

- Mr. Weyher said purchasing the notes as an investment didn't make sense. The inducement would be to simplify the situation.

Mr. Player asked if the Town purchased the notes could they turn around and sell them to the home owners.

- Mr. Jenkins said the Town would need to speak with their attorney but had an obligation to dispose of assets reasonably. At this point Color Country was offering the Town an opportunity to be in control.

Mr. Alltucker expressed his support however he said the Town should require a preliminary title report, appraisal and pro-forma closing statement. He suggested the Town enter into an exclusive 30-day agreement with Color Country to negotiate the sale of the notes. This would provide time to digest the numbers.

- Mr. Jenkins said money would be set aside by RCAC from the sale of the remaining lots to pay for the administrator to administer the affordability period.

Mr. Jenkins left the room to call Color Country and ask their willingness to enter into a 30-day agreement with the Town of Springdale.

Rick Praetzel attended on behalf of Shelley Carver. He asked if the Town acquired the notes could they come together with the home owner in order to change the terms of the note. This would likely simplify the process.

- Mayor Smith said if the Town owns an asset they have an obligation to ensure that asset is taken care of to the best degree possible. If the Town turned around and sold the notes to the home owner they would need to explain why the loss of investment was justified.
- Mr. Weyher cautioned the need to follow federal guidelines as it relates to affordable housing.

The Council wanted to be sure there were no unintended consequences from the purchase of the notes. The 30-day period would allow them time to investigate any obligations.

- Mr. Wixom said Color Country saw the benefit of selling the notes to the Town. They understood the situation was complicated and wanted to help resolve it.

Lisa Zumpft was in attendance and said questions need to be answered regarding the legality with HUD and the affordable housing component. Mayor Smith agreed.

Mr. Wixom sent a text to Tracy Dutson asking if there was a provision to forgive the second mortgage if the first was paid off. Mr. Dutson replied 'no'. Mr. Wixom said the second mortgage exists in a non-interest bearing mode. When the house was eventually sold the note would be due.

- Mr. Hardman said the documents detailed what would happen if there was a transfer prior to the end of the affordability period, or a foreclosure, or a death of an owner, or other contingencies.

Mr. Jenkins returned from his phone call with Color Country and said they approved the 30-day irrevocable offer period.

Motion made by Mike Alltucker to enter into a 30-day irrevocable offer with Color Country to purchase the promissory notes for lots 7 and 8 in the Red Hawk subdivision for \$5,000.00 total. During the 30-day period the Town must obtain a title report, conduct a drive-by appraisal, create a pro-forma closing statement at the 10-year point for both the buyer and seller, answer questions if the second mortgage is extinguished after payment of the first mortgage is paid off, investigate if the Town takes on any other obligations or issues with HUD, the Home Owner's Association or any other entity by owning these secondary notes; seconded by Bill Weyher.

Weyher: Aye

Chambers: Aye

Smith: Aye

Player: Aye

Alltucker: Aye

Motion passed unanimously.

Mr. Hardman asked Mr. Jenkins to get something in writing from his client that confirmed the arrangement. Mr. Jenkins said he would obtain an email from Color Country.

Adjourn:

Motion to adjourn at 11:24am by Mark Chambers: seconded by Adrian Player:

Weyher: Aye

Chambers: Aye

Smith: Aye

Player: Aye

Alltucker: Aye

Motion passed unanimously.



Darci Carlson, Town Clerk

APPROVED: 

DATE: 1/13/16

